

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

SANDRA V. GILBERT,

Appellant.

No. 38703-4-II

UNPUBLISHED OPINION

Armstrong, J. — Sandra V. Gilbert pleaded guilty to nine counts of forgery, seven counts of first degree theft, and two counts of identity theft. The court sentenced her to the statutory maximum of 120 months, plus 9-18 months of community supervision. It provided in the judgment and sentence that “[t]he total amount of incarceration and community custody cannot exceed 120 months.” Clerk’s Papers at 84. Gilbert contends that this sentence is impermissibly indeterminate, and that it violates the constitutional separation of powers doctrine. We affirm.

**FACTS**

Gilbert worked as a business office manager at Willapa Harbor Care Center from November 3, 2006, until she resigned on August 28, 2007. While she was there, she deposited 66 unauthorized checks into her own bank account totaling \$58,907.98. The State charged her with the 18 counts described above, and she pleaded guilty to them on October 24, 2008, stipulating that the aggravator in RCW 9.94A.535(2)(c) provided a basis for an exceptional sentence. She now challenges that sentence.

## ANALYSIS

Gilbert first claims that her sentence is not a determinate sentence because the court did not specify what part is to be served in incarceration and what part in community custody. Our Supreme Court recently rejected this argument. It affirmed a sentence like this one, holding that the sentence was not indeterminate because it had both a defined range and a determinate maximum. *See In re Personal Restraint of Brooks*, 166 Wn.2d 664, 674-75, 211 P.3d 1023 (2009). The *Brooks* court specifically approved the method used here. *Brooks*, 166 Wn.2d at 675.

Likewise, without merit is the claim that the method used violates the separation of powers doctrine. Gilbert argues that it permits the Department of Corrections, to usurp the legislature's prerogative to fix punishments for crimes. Of course, the legislature has the ability to delegate some of its functions to the other branches of the government, as long as it provides sufficient guidelines. *See State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 796 (1986); *State v. Campbell*, 103 Wn.2d 1, 25-26, 691 P.2d 929 (1984). It did exactly that when it enacted RCW 9.94A.728(1), giving the Department the authority to establish grounds for and award earned release time. Moreover, it explicitly provided for the situation at issue here. In RCW 9.94A.715(1), it authorized the courts to limit community custody to the period of earned release awarded. In RCW 9.94A.715(4), it authorized the Department to determine the date of discharge from community custody, based on risk and performance of the defendant. And in RCW 9.94A.505(5), it limited that grant of discretion, requiring the Department to release a defendant when he or she has served the statutory maximum penalty. Gilbert's sentence is a proper exercise

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of the authority delegated.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

We concur:

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Houghton, P.J.

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Hunt, J.